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Legal DEPARTMENT

A. BRANCH

816

Subject:- Bombay Revenue Tribunal Act 1939.

Opinions under the -

P-49

File No. O. B. R. T./41.

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232-A.

CONTENTS.

Legal Department Vol. no. O. B. R. T./1941.

S. No.	Comp. No.	Subject	Pages.
		Opinions under the Bombay Revenue Tribunal Act, 1939.	
1	O. B. R. T. /1941 O. N. 2319/14/3/41.	Questions 1) whether Assistant Secy. R. D. can certify on behalf of the Secy. to the B. R. T. the copies of documents to be granted to the applicants from the records of the tribunal under the B'bay Revenue Tribunal Records Inspection, search and copies Regulations. 2) What court fee stamp duty would be leviable on the copies of documents; 3) Whether the note below the said Regulations should be amended as proposed by R. D. and whether such amendment requires to be published in the B. G. G. and 4) Whether applications from persons other than portion for certified copies of documents can be rejected.	1-6
2.	O. No. 3025/3/4/41.	Re: Grant by the collector of certain land forming part of public street to same private party. It was afterwards decided to cancel the grant as the same was illegal. Appeal in the matter made by the party ~~to the party to~~ the B. R. T. B. R. T. ordered that if Govt. thinks that the land in question should remain part of of the public street they are entitled to eject the Appelant but only after payment to him of the occupancy price he paid. Question whether the order of the B. R. T. is legal and if it is not legal what steps should be taken by Govt. in the matter.	7-12
3.	O. No. 169 confl. 2/4/41.	Re. Giving decision by the provident, B. R. T on certain care after taking into consideration the views of the commissioner- member and non-official member. Amendment of the B'bay B. R. T. Regulations.	
4.	O. No. 4763/24/5/41.	Re: Amendment of B'bay Revenue Tribunal Regulations order to overcome certain difficulties experienced by the B. R. T. in passing order in respect of certain cases.	17-26

5) O. No. 4957/ 30/5/41. Question whether Distt. Govt. pleaders and Asstt. Govt. pleaders can be appointed as non-official members of the B'bay Revenue Tribunal.
B. R. T. Rules, 1939, Clause (c) of Rule 3. 21-22

6) O. No. 5100/3/6/41. Questions 1) whether the collector's improper order in respect of certain land would be binding on Govt.
2) Whether the power of Govt. to resume the land for breach of conditions of sanad can be delegated to the collector.
3) Whether Govt. can file a suit against a wrong order passed by the Revenue Tribunal or refuse to carry out such order. 23-26

7) R. I. No. 3307/16/4/41
" 3733/24/4/41.
O. No. 4190/8/5/41.
R. I. No. 4060/3/6/41.
O. No. 5858/4/7/41. Re: Supplying copies of relevant documents to the Govt. pleader appearing in tribunal cases. Draft G. R. R. D. in respect of procedure for presentation of Govt's case before Revenue Tribunal in cases fixed for hearing arguments. 27-46

8) R.I. No.6011/20/7/41.
O. No. 145-p conf1/ 8/8/41. Re: R. L. A's opinion No. 3023 dated 3/4/41. Requests from Govt. to B. R. T. to revise its order Suo motu under sec. 7 of the B. R. T. Act, 1939 treated by the president the above letter of request from Govt. as an application for revise after B. R. T. order.
Question whether the application can be dismissed as time-barred. 47-50

9) R. I. No. 6470/5/8/41.
O. No. 7976/13/8/41. Conf1. Re: ---------- do ----------
Question regarding calling of a detailed report as required by G. C. R. D. No. 3724/30 dated 16/8/41. 51-52

10) R. I. No. 6058/10/8/41. G. C. R. D. No. 3724/30 d 10/8/41.
Re: Procedure for presentation of Govt's case before Revenue Tribunal in cases fixed for hearing arguments. 53-58

11) O. No. 7380/4/8/41. Re. Endorsement forwarding copy of G. C. R. D. No. 3724/39 d 10/8/41 to O. P. High Court Bombay for information. 59-60

12) O. No.6037/13/8/41. Question whether a suit can be filed in a court of law on behalf of the collector or other officer from whose decision an appeal is made to the R. R. Tribunal against a wrong order passed by the Tribunal in such appeal. 61-64

13) R. I. No. 6160/20/8/41.
O. No. 6858/10/10/41. Question whether there is any objection to forwarding copies of R. L. A's opinions under the provisions of various Acts mentioned in the schedule to the B'bay Revenue Tribunal Act, 1939, to the president and to the Non-official member of the R. R.T. 65-66

14) O. No. 10510/17/13/41. re: Procedure regarding presentation of appeals and applications for revision or review made to the B. R. T. 67-72

15) B. I. No. 11000/13/11/42. G. O. M. P. no. 3[illegible]/39 d 10/11/42. Re: B'bay Revenue Tribunal Procedure for presentation of Govt. case before in cases fixed for hearing. 73-74

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Office of the R. I. A.

The questions raised for the consideration of the Remembrancer of Legal Affairs, are :

(1) Whether the Assistant Secretary, Revenue Department, can certify on behalf of the Secretary to the Bombay Revenue Tribunal the copies of documents to be granted to the applicants from the records of the Tribunal under the Bombay Revenue Tribunal Records Inspection, Search and Copies Regulations,

(2) what court fee or stamp duty would be leviable on the copies of documents mentioned in paragraph 2 of Revenue Department office note at pages 67-68 ante.

(3) whether the Note below the said Regulations should be amended as proposed in paragraph 3 of Revenue Department office note and whether such amendment requires to be published in the Bombay Government Gazette, and

(4) whether applications from persons other than parties for certified copies of documents can be rejected.

2. Question No. (1) :- Section 76 of the Indian Evidence Act, 1872, provides that every public officer having the custody of a public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of suc. copy that it is a true copy of such document and that such cetificate shall be dated and subscribed by such officer with his name and official title. Under this section the certificate that the copy is a true copy of the original document is to be subscribed by the officer having the custody of the document himself. Regulation 3 of the Bombay Revenue Tribunal Records Inspection, Search and Copies Regulations provides that the records of the Tribunal shall be kept in the custody of the Secretary to the Tribunal. The certificates on copies of documents from the records of the Tribunal shall therefore have to be signed by the Secretary to the Tribunal himself.

SVV
28.5.56.
4 o/c

It will not be competent for the Assistant Secretary, to Revenue Department, to sign thecertificates on behalf of the Secretary to the Tribunal.

3. Question No. (2):- It is open to doubt whether any of the documents referred to in para. 2 of the Revenue Department office noteat pages 67-68 ante fall under any of the articles 6 to 9 in the First Schedule to the Court Fees Act, 1870. It is equally doubtful whether article 9 applies to the documents mentioned in items (1) to (3) in paragraph 2 of the Revenue Department office note as the question whether the proceedings before the Tribunal can properly be held to be revenue or judicial proceedings is itself a moot point. It is likewise questionable whether article 6 will cover the documents mentioned in item (4) in para. 2 of the Revenue Department office note. Articles 7 and 8 have clearly no application to these documents. The Court Fees Act is a fiscal enactment and has accordingly to be construed strictly. In my opinion, therefore, it does not appear that any of the articles in the First Schedule to the Court Fees Act can apply to these documents. Consequently these documents will be chargeable under Article 24 of the Indian Stamp Act, 1899.. The note below Regulation 11 (page 60 ante) may be amended by substituting the following for the existing note :-

> "Note :- Before a copy of any document is furnished to an applicant under these Regulations, the stamp duty payable under Article 24in the First Schedule to the Indian Stamp Act, 1899 (II of 1899), shall be paid by him."

As the original note was published in the Bombay Government Gazette it is desirable that the revised note should also be published in the Gazette for general information.

4. Question No. (3). - It does not appear that applications for copies of documents from the records of Tribunal fall under Article 1 of Schedule II of the Court Fees Act or under any other Article. No Court fee is, therefore, payable on such applications.

5. Question No. (4). - Regulations No. 4 of the Bombay Revenue Tribunal Records Inspection, Search and Copies Regulations

SVV
28.5.56.
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provides that any person desiring to make inspection of, or obtain copies of any records of the Tribunal or extracts therefrom, shall make an application in writing to the Secretary, Regulation No. 5 gives discretion to the Secretary to grant any application made under regulation 4. In Mitter v. Easter and Midland Rly. Co. 1888 L.R. 38 Ch. D. 92, 106 Lindley L.J. said: "When the right to inspect and to take a copy is not expressly conferred, the extend of such right defends on the interest which the applicant has in what he wants to copy, and on what is reasonably necessary for the protection of such interest." The common law right to inspect and take copies of public documents is limited by this principle as laid down by the judgment in Rex v Justices of Staffordshire (6 Ad and E 84, 99, 101; Sarkar's Evidence Act, 6th Edition p. 614). It is for this reason that the discretion to grant inspection of copies of any records of the Tribunal or extracts therefrom has been given to the Secretary under regulation 5. Consequently it would be open to the Secretary of the Tribunal to refuse to allow any person, not a party to the proceedings, to make inspection of or obtain copies of any records of the Tribunal unless he can show that he has an interest for the protection of which it is necessary that liberty to inspect or obtain a copy of such document should be given to him (see Sarkar's Evidence Act p. 614).

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12/3/
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U.R. to R.D., 2315, dated the 14th March, 1941.

SVV
28.5.56.
4 c.

Office of the R.L.A.

The material facts of this case are as under. In 1931, the Collector of Thane granted to one Ujjam Zunakram a strip of land forming part of a public street in the ~~xx~~ village of Mokhada. In 1958, it was noticed by the Commissioner that the grant was illegal and he therefore directed the Collector to cancel the grant and evict the appellant. On 16th January 1959 the Collector passed an order cancelling the grant and directing Ujjam Zunakram to vacate the land. Ujjam thereupon appealed to the Commissioner against the order of the Collector. The Commissioner rejected the appeal. He filed a further appeal to the Tribunal. The Tribunal has passed the following order on 2nd October 1960:-

"We are of opinion that if Government think that the land in question should remain part of the public street, they are entitled to eject the Appellant but only after payment to him of the occupancy price ~~xxx~~ he paid together with a sum of Rs. 125/-. If, on the other hand, they agree with the ~~xxx~~ opinion of the Collector in 1931 that the public street remaining even after the grant of the land is sufficient, it ~~is~~ for them to follow the procedure laid down in section 37A of the Bombay Land Revenue ~~Code~~ and allow the Appellant to ~~x~~ remain in possession on the terms agreed upon between ~~him~~ him and the Collector in 1931."

2. The questions for consideration of the R.L.A. are what ~~are~~ the order passed by the Tribunal is legal and if it is not legal what steps should be taken by Government in the matter.

3. The order passed by the Tribunal is not legal for two main reasons, namely, (i) the first part of the order which requires Government to pay compensation of Rs. 125/- to the appellant is wit out jurisdiction and illegal, and (ii) the whole order inasmuch as it expresses only the opinion of the Tribunal and leaves the matters to

Government to decide, is not an order passed according to law.

4. In paragraph 6 of the Tribunal's order it is stated that the Crown Grants Act, 1895, has no application to the present case which according to the Tribunal must be governed by the equitable principles embodied in section 51 of the Transfer of Property Act. No reasons are stated by the Tribunal in its order for holding the view that the Crown Grants Act has no application to the present case. The view taken by the Tribunal is not correct. The case obviously relates to a grant by or on behalf of the Crown and is therefore governed by the Crown Grants Act. Section 2 of this Act expressly provides that nothing in the Transfer of Property Act, 1882, shall apply to any grant or other transfer of land made by or on behalf of the Crown and that every such grant or transfer shall be construed and take effect as if the said Act had not been passed. It is clear that the Transfer of Property Act has no application to the present case and no order for compensation could therefore in law be passed in this case under section 51 of this Act. It is true that the principle embodied in this section 51 is held to be a principle of general law and is sometimes applied by Courts even in cases which are not governed by the Transfer of Property Act (see Kidar Nath vs. Nathu Mal, 40 Cal. 855 and Chenna-pragada vs. Secretary of State (1925) 48 Madras L.J. 682 quoted at p. 211 of Mulla's Transfer of Property Act (2nd edition)). Assuming, therefore, that the principle of this section can be applied to Crown grants, the question arises whether the Tribunal was within its jurisdiction in making an order for compensation in this case. It is necessary for this purpose to examine precisely the powers of the Tribunal in passing orders in such cases.

5. The Tribunal is constituted under the Bombay Revenue Tribunal Act, 1939. It is not a Civil Court

SVV
29.5.56.

and has not, therefore, the powers of a Civil Court. It is a creature of law. It can exercise only such powers as are conferred on it under the Bombay Revenue Tribunal Act under which it is constituted. Section 4(1) of this Act provides that the Tribunal shall exercise such jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the Provincial Government immediately before the 1st day of April 1947 [illegible] by law for the time being in force. Section 5 of the Act provides that in the exercise of the jurisdiction conferred upon it under section 4 in any case, the Tribunal shall have and may exercise all the powers which the Provincial Government had or could have exercised in such case. The present case before the Tribunal was one of appeal against an order passed by the Collector under the Bombay Land Revenue Code. The powers which the Tribunal has or can exercise in such cases are those referred to in section 209 of the Code. That section provides that the appellate authority may for reasons to be recorded in writing either annul, may vary, modify or confirm the decision or order of the subordinate officer appealed against or he may direct the subordinate officer to make such further investigation or to take such additional evidence as he may think necessary or he may himself take such evidence. Under this section, the Tribunal could annul, reverse, modify or confirm the order passed by the Collector. This section does not empower the Tribunal to make an order for payment of compensation by Government in deciding the appeal. Compensation can be ordered under section 51 of the Transfer of Property Act or on the equitable principle underlying the section only by a Court on the eviction of the transferee. As stated before, the Tribunal is not

a Court and has not jurisdiction to pass order relying on the principles of this section. The order made by the Tribunal awarding compensation to the appellant is clearly in excess of the powers conferred on it and is, therefore, without jurisdiction.

6. It may be further pointed out that even on merits no order for compensation could have been made in this case. The land was admittedly a part of the public street. The Collector's order of 1931 granting the land to the appellant was clearly illegal. The grant was neither made nor authorised by Government. The present order of the Collector against which the appeal was filed provided only for setting aside an illegal order. It cannot be disputed that the impugned present order passed was according to law. It has been held in numerous cases that Government cannot be held liable for the wrongful or unauthorised acts of its subordinates or for any belief or impression created by such an unauthorised acts of its officers (see Secretary of State vs. Subramanji, I.L.R. 26 Bom. 801, Prasanna Kumar vs. Secretary of State, I.L.R. 26 Cal. 793 and Secretary of State vs. Faredoon, 36 B.L.R. 761). In this case, the loss suffered by the appellant, if any, was due to the illegal and unauthorised order made by the Collector in 1931 and no compensation can be ordered to be paid by Government for such loss. The present order passed by the Collector was admittedly accordingly to law and there can, therefore, be no cause of action against Government in respect of such order (see Parappa vs. Secretary of State Printed J. (1891 p. 250). Besides, section 51 of the Transfer of Property Act provides for compensation to be paid to a transferee only when he makes an improvement on the property believing in good faith that he is absolutely entitled thereto. A person is said to have acted in good faith when he has acted with due care and caution. In this case the appellant who was evidently a resident of the

SVV
29.5.56.

same village must be presumed to have known that the land was part of a public street and that the order passed by the Collector in 1931 granting the land ~~xxxxxxx~~ to him was illegal. In these circumstances, the appellant could not be held to have believed in good faith that he was entitled to the land. For these reasons, the appellant was not entitled to compensation even on merits either under section 81 or on the the strength of the principle underlying the section.

7. It is true that Government as the Supreme or Sovereign authority of the State has the power to award compensation of its own accord in any case in which it finds that hardship has been caused to any person by an illegal order of any of its subordinate officers. But this inherent power of Government to award compensation as an acts of grace cannot be exercised by the Tribunal. The powers of Government which under section 5 can be exercised by the Tribunal are powers which Government itself could exercise either as an appellate or a revisional authority. As pointed out by Secretary, Revenue Department, while dealing with any case, "the Tribunal should confine its attention only to matters which are strictly within the four corners of law applicable to the facts of the case." It cannot exercise any discretionary or inherent powers of Government.

8. It is thus clear that the order passed by the Tribunal in so far as it awards compensation to be paid by Government is without ~~xx~~ jurisdiction and illegal.

9. The order of the Tribunal as it stands is also not legal because it is not an order passed according to law. The first part of the order is merely an expression of opinion by the Tribunal that if Government thinks that the land in question should remain part of the public street, they are entitled to object the

appellant but only after payment to him of the occupy occupancy price be paid together with a sum of Rs. 125/- The latter part of the order states that if on the other hand Government agree with the opinion of the Collector in 1931, it is for them to follow the procedure laid down in section 37A and allow the appellant to remainin possession. As stated in paragraph 5 above the order which the Tribunal could pass in this case was either to annul, reverse, modify or confirm the decision or order of the Collector or to direct him to make further investigation or to take additional evidence. The order made by the Tribunal does not either annul, reverse, modify or confirm th order of the Collector or direct him to make further investigation or take further evidence. The order is not definite and leaves the whole question to Government to decide finally.

10. As the order is, for reasons stated above, clearly illegal, the best course to adopt for the present is to bring the position to the notice of the Tribunal and to request it to review its order suo motu under section 7 of the Bombay Revenue Tribunal Act. The ~~ex~~ Government Pleader, High Court, may then be instructed to argue the matter before the Tribunal.

Id./- F.K.M.
Remembrancer of Legal Affairs.

U.R. to R.D., No. 3025, dated the 3rd April 1941.

SVV
29.5.56.
4 c.

Office of the R.L.A.

With regard to the cases disposed of by circulation, the suggestion made by Secretary, Revenue Department, in para.2 of his note at pages 18-19 ante does not appear to be suitable. The suggestion is that after the President received the papers with the opinions of the Commissioner member and the non-official member recorded therein, if he finds that there is a disagreement between the Commissioner member and non-official member he should prepare a tentativ draft order embodying the view of the case with which he agrees. The draft order should then be sent to the third member who finds himself in a minority for his personal perusal and observations, after the receipt of which the President should, after considering the observations of such members prepare the Tribunal's final order in the case. The suggestion is not suitablefor two reasons. In the first place, it is very doubtful whether the President would change his view after he has prepared a tentative draft order. In the second place, in cases where the President agrees in the first instance with the view taken by the Commissioner-member and sends his tentative draft order to the non-official member for his observations but finally agrees with the non-official member after considering the observations made by the non-official member, the Commissioner-member will again be faced with the same difficulty as now, inasmuch as he will again be confronted with a majority decision without having an opportunity to meet the case made out in the observations of the non-official member. The best course to meet difficulty appears to be to provide that the President shall after he receives the papers from the Commissioner-member and the non-official member, if he finds that there is a disagreement between them, send back the papers to the Commissioner-member for his observations on the view expressed by the non-official member and that the papers shall then be sent by the Commissioner-member with his

SVV
29.5.56.
4 c.

observations to the President. The President shall then form his own view and prepare an order in accordance with the majority view. If Revenue Department agrees with this suggestion, the Bombay Revenue Tribunal Regulations may be amended accordingly.

2. As regards the cases to be decided after personal hearing, it will not be possible for Legal Department to prepare a draft brief, send it to the Collector for amplification and criticism and prepare a final brief. This would mean duplication of work in Legal Department. Moreover no brief can be prepared in Legal Department, without a full report as regards the facts of the case. The proper procedure would be that immediately after Revenue Department receives a notice that an appeal will be heard, it should ask the Collector to submit through the Commissioner a full report stating the facts of the case and the ground on which it is proposed to base the defence. The report may be made on the lines of the report required in case of civil suits under rule 118 of the Law Officers' Rules and should be accompanied by all material documents together with a translation in English of important statements and documents. After the Collector's report is received, a brief may be prepared in Legal Department and the Government Pleader may then be instructed to argue the case on lines of the brief.

Id./- P.N.M.
1/4/
Remembrancer of Legal Affairs.

W.R. to R.D., No. 169-Conf1., dated the 2nd April 1941.

SVV
29.5.56.
4 c.

Office of the R.I.A.

The refusal of the Commissioner member to sign the majority order of the Revenue Tribunal would appear to be not entirely without justification. In any event it has had the effect or bringing into prominence, though in a somewhat drastic fashion, these unsatisfactory procedure guiding the deliberations of the Tribunal.

2. The view taken by the non-official member of the Tribunal (Dewan Bahadur C.M.Gandhi) that the Commissioner referred to in Regulation 7(1) of the Bombay Revenue Tribunal Regulations, 1939, is the Commissioner of the Division from which the appeal or application is made i.e., in the present case, the Commissioner, Southern Division and not the Commissioner, Central Division, is not correct. The Commissioner referred to in Regulation 7(1) is the same Commissioner referred to in Regulation 6 viz., the Commissioner member of the Tribubal. This is evident from the use of the word "such" in Regulations 7(1) and 7(2).

3. It is true that the procedure laid down in Regulation 7 is not exhaustive and no specific provision is made therein for the submission of papers at the ~~ins~~ instance of a member other than the Commissioner. But when this Regulation is read with Regulation 16 which empowers the Tribunal to call for the record and proceedings, the action of the non-official member in calling for the papers through the President cannot be held to be legally objectionable.

4. Regulation 7(2) as it stands contemplates that when an appeal or application is to be decided on merits the opinion of the Commissioner member should be recorded first, that of the non-official member seconding the President last. In the present case, when the President agrees with the non-official member's view that appeal ~~did~~ did not merit summary dismissal on the point of jurisdiction, the proper course which the President

SVV
29.5.56.

should have followed was to return the papers to the Commissioner for his opinion on merits as required by Regulation 7(2). Regulation 7 contemplates that in every appeal the Commissioner Members's views should be before the other members of the Tribunal at the time of consideration of the appeal. In this case, the appeal has been decided on merits without the Commissioner being given an opportunity to state his views for the benefit of other members. The procedure followed by the President was clearly irregular and the appeal cannot therefore be deemed to have been properly dealt with by the Revenue Tribunal. Although the President and the non-official member have expressed thier views on the merits of the case the final order of the Tribunal has not been signed by all the three members as required by Regulation 18. Consequently the appeal has not yet been disposed of and must be regarded as still pending. The Tribunal is accordingly not functus officio. It can reconsider the appeal if necessary at a joint sitting. If this course be suggested to the President it would end the present deadlock.

5. If, however, the above suggestion is not acceptable to the President, the only other course open to Government would be to invite the attention of the Commissioner to Regulation 18 and to request him to sign the majority order subject to any dissenting judgment he may choose to write. It is true that the Bombay Revenue Tribunal is an independent Tribunal and the Commissioner as a member of the said Tribunal is not strictly under the orders of Government. He is nevertheless a subordinate officer of Government and there can be no objection to Government advising him to sign the majority decision in order to end the present deadlock. To prevent such cases arising in future the Regulations will have to be suitably amended.

Id. P.M.M.
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Remembrancer of Legal Affairs.

U.R. to R.D., No. 4765, dated the 24th May 1941.

SVV
29.5.56.

E.L.A.'s Office.

Rule 3 of the Bombay Revenue Tribunal Rules, 1939, framed by Government under section 12 of the Bombay Revenue Tribunal Act, 1939, provides that the Bombay Revenue Tribunal shall consist of a President and two other members. Under sub-rule (2) of Rule 4, of the other two members of the Bombay Revenue Tribunal, one shall be a non-official. The word non-official is defined in clause (c) of Rule 2 to mean a person who at the date of his appointment does not hold any office of profit under the Crown in India. A District Government Pleader is paid a salary as laid down in Rule 30 of the Bombay Law Officers (Conditions of Service) Rules, 1939. In addition he is p id fees for the civil and criminal work done by him. An Assistant Government Pleader is not paid any salary but is entitled to fees as in the case of the District Government Pleader in respect of civil or criminal work done by him. The fees payable to both the District Government Pleader and Assistant Government Pleader are provided under the Law Officers (Conditions of Service) Rules framed under section 241 (1) of the Government of India Act, 1935. A District Government Pleader and an Assistant Government Pleader thus hold civil posts under the Crown in India, though they are not full-time servants of Government. And as the District Government Pleader receives a salary and fees, and as the Assistant Government Pleader is expected, by virtue of his office, to do legal work for Government for which he receives fees, they must be x regarded as holding offices of profit under the Crown. Neither of them can therefore be appointed to be a non-official member of the Tribunal unless he first resigns his appointment as a Government Pleader.

Id./- P.N.M.
29/5/
Remembrancer of Legal Affairs.

U.R. to R.D., No. 4987, dated the 30th May 1941.

SVV
29.5.56.
4 c.

Office of the R.L.A.

The first question which arises for consideration in this case is whether the view taken by the Commissioner, Central Division in para. 7 of his letter dated 12th March 1941 at page 12 ante is correct. In this para. the Commissioner states as follows:-

"The Collector's preliminary direction was obviously wrong. The Bombay Revenue Tribunal instead of holding this wrong, as might be understood from the R.L.A.'s opinion clearly holds that he cannot correct it and therefor holds that an improper order of the Collector binds him and possibly Government."

There is however nothing in the Tribunal's order which lays down that an improper order passed by the Collector is binding on Government. (see the Tribunal's order at page 29 in R.D. file B R T. 442, slip E). All that is stated in the last para. of the Tribunal's order is that the appellant having carried out the first order of the Collector, it was no longer open to the Collector to resume the lands as he did. The question whether in such cases Government can or cannot resume land for breach of the conditions of the Sanad was neither raised before nor decided by the Tribunal. Consequently, the inference drawn by the Commissioner from the Tribunal's order that if the Collector passed any improper order, such order would bind Government does not appear to be correct.

2. The next question for consideration

is whether the power of the Government to resume the land for breach of the conditions of the Sanad can be delegated to the Collector. The grant in such cases is governed by the terms and conditions of the Sanad. The powers of Government to resume the land can therefore only be exercised in accordance with these terms and conditions. Clause (d) of the conditions authorises only Government to resume these lands for breach of the conditions. Consequently it will not be open to Government to delegate his power to the Collector.

3. The last question to be considered is whether Government can file a suit against a wrong order passed by the Revenue Tribunal or refuse to carry out such order. The Tribunal has been constituted to exercise the same jurisdiction to entertain appeals and revisions in revenue cases as was vested in the Provincial Government immediately before the 1st day of April 1937. (See section 296 of the Government of India Act, 1935 and section 4 of the Bombay Revenue Tribunal Act, 1939). Under section 5 of the Bombay Revenue Tribunal Act, 1939, in the exercise of its jurisdiction in any case, the Tribunal can exercise all the powers which the Provincial Government could have exercised in such case. The functions of

29.8.56

Government in regard to such cases are therefore now vested in the Tribunal, which can exercise all the powers which Government could previously exercise either as an appellate or revisional authority. The parties in such cases are almost invariably the person affected by the orders of the Collector or Commissioner on the one hand and Collector or Commissioner on the other. It is accordingly extremely doubtful whether Government can strictly be regarded as a party to the proceedings before the Tribunal. In my opinion, it will not be open to Government to file a suit for the purpose of setting aside the Tribunal's order. Under section 10 of the Act all orders passed by the Tribunal are to be executed in the manner in which similar orders passed by the Provincial Government or other competent authority could be executed. In the face of this provision it will not be proper for Government to refuse to carry out the orders passed by the Tribunal. Where Government considers that the order passed by the Tribunal is wrong or without jurisdiction, the proper course would be to request the Tribunal to revise its own decision. (See R.L.A.'s opinions Nos. 10989 dated 26-10-40 and 3035 dated 3-4-41.).

4. The position is admittedly far from satisfactory and the only way Government can safeguard its rights would be by radical amendment of the statutory rules

and regulations.

Id./- P.N.U.
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Remembrancer of Legal Affairs.

U.R. to R.D., No. 5100, dated the 4th June 1941.

SVV
29.5.56.
4 c.

Revenue Department.

These papers deal with the question of supplying copies of relevant documents to the Government Pleader appearing in Tribunal cases. L. D. wants this Department to supply copies of the following documents —

(a) appeal petitions.

(b) orders appealed against.

(c) chronological list of all the papers in the record.

(d) such documents as may be selected by L. D. at the time of preparing the memorandum of instructions to the Government Pleader.

2. Appeal petitions are either in English, sometimes covering several sheets of typed matter - (two such petitions are put up as specimens) - or are in the regional languages. Considerable time and labour will be for typing and comparing them. It may also be mentioned here that in each session of the Tribunal 6 to 10 appeals are fixed for hearing. If the petitions are in the regional languages, English translations thereof will have to be supplied and as it will not be possible for office to translate them in English, they will have to be sent to to the C. T. to Government. As regards the supply of a chronological list of all the papers the case papers contain correspondence between the Collector and his subordinate offices and the Commissioner. They are invariably bulky, in the regional languages and not arranged systematically.

Every page will have to be scrutinised and the papers re-arranged according to dates. A list will then have to be prepared in the first instance and thereafter typed. Several hours will be needed for preparing such a list The need for such a list is however not understood when the Collector invariably sends a diary as required by B.R.T. Regulationsx 16. A copy of the Collector's diary can be supplied to Government Pleader, as well as a copy of the order appealed against, the latter being short and invariably in English.

As regards copy of relevant documents that may be required, please see the Government Pleader's letter No. 2679, dated the 11th December 1940, for an idea of the nature of the documents asked for by him. Documents in the regional languages will have to be translated in English. They [illegible] sent to O. T. If any plans are required, neither O. T. nor this Department will be in a position to prepare one.

3. In these circumstance, it will not be possible for this Department to supply <u>in time</u> all the documents that may be asked for or undertake translationx in English. If English translatons of documents in regional languages are required there is every possibility of delay in supplying the translations by O. T., and the documents needed will have to be supplied immediately. Please see in this connection para. 5 of the

SVV
29.5.56.
4 c.

office note of today's date in the linked case (R. D. file 3724/39). L. D. has stated that the difficulty experienced by the Government Pleader will not be felt if R. L. A.'s suggestion is accepted, as the Collector will be supplying all the material documents that may be required by the Government Pleader. As the procedure referred to in para. 2 of R. L. A.'s memorandum No, 169-Confl. dated the 2nd April 1941 is proposed to be accepted, it will not be necessary for this Department to supply, copies of the documents that may be required by the Government Pleader.

4. There are about 6 appeal cases fixed for hearing at the next session of the Tribunal, that is, in July. Copies of the relevant documents, provided they are in English, may be supplied by this Department in these cases. If however, the circular memorandum referred to in the linked case issues, there may be sufficient time to get the cases prepared by the Collector concerned who will then be supplying the relebant documents when submitting his report. These papers may be returned to L. D.

SVV
29.5.56.

31-5-41

Office of the S.L.A.

The procedure which the Commissioners suggest should be followed in cases in which there is a difference of opinion between the members of the Tribunal is suitable and may be followed in future. The Commissioners suggest that in cases in which it is decided to give a hearing to the parties, a statement of the points which the Tribunal wishes to be argued should be prepared and copies of it should be supplied to the parties. It is, however, often necessary for Government to raise the question of jurisdiction before the Tribunal. When communicating the proposals made by the Commissioners to the President of the Tribunal, it may, therefore, be made clear that in addition to the points mentioned in the statement prepared by the Tribunal, Government should be at liberty to raise the question that the Tribunal has not jurisdiction in the case.

3. It would be desirable to lay down very clearly in the Circular the procedure which is to be followed in such cases in future. A revised draft Circular is sent herewith. The revised draft provides not only for appeals but also those cases in which revision applications are made to the Tribunal. Under clause (f) of the Circular copies of certain documents will have to be supplied by the Revenue Department to the Government Pleader. It will be seen from clause (b) that the translations of the documents which are in the regional language will be supplied by the Collector. The Revenue Department will therefore have to prepare only copies of those documents which are in English and copies of which should, in the opinion of the Remembrancer of Legal Affairs, be supplied to the Government Pleader. It is necessary that the Government's case should be properly argued before Revenue Tribunal and for this reason it is essential

that the Government Pleader should be supplied with copies of all material documents. (Please see in this connection the joint note of the Commissioners at pages 31 - 33 ante.) .

Id./- P.N.M.
1/7/
Remembrancer of Legal Affairs.

U.R. to R.D. , No. 0868, dated the 4th July 1942.

SVV
29.5.56.
4 c.

Procedure for presentation of Government's case before Revenue Tribunal in cases fixed for hearing arguments.

Government of Bombay.
Revenue Department.
Circular No. 3734/39.
Bombay Castle, 1941.

Circular of Government.

The procedure obtaining at present for the presentation of the Government side of the case before the Bombay Revenue Tax Tribunal in appeals and revision applications which are decided after hearing has been found to be not entirely satisfactory. Government therefore desires that the following procedure should be followed in such cases in future:-

(a) The Revenue Department should inform the Collector as soon as it receives an intimation from the Tribunal that the case has been fixed for hearing.

(b) The Collector should then submit a full report stating all the facts of the case to the Commissioner. He should send along with this report. -

(i) All the records of the case, which should be arranged in proper order and paged.

(ii) A copy of the diary, which the Collector has submitted to the Bombay Revenue Tribunal under Regulations 16 of the Bombay Revenue Tribunal Regulations, 1939.

(iii) A full and detailed statement,

SVV
29.5.56.
A c.

stating all the facts of the case and the grounds on which the appeal or revision application should in the Collector's opinion be defended. The statement should emphasize the revenue side of the case.

(iv) If the case turns on documentary evidence copies of the documents relied on by Government or by the appellant or the applicant.

(v) Translations in English of all important papers which are in the regional language.

(vi) Translations in English typed in half margin of the Appeal Memo or Revision Application if they are in the regional language. The important statements in the Appeal Memo. or the Revision Application should be clearly marked and notes may be added in the margin stating whether such statements are correct or not and if not, in what respect they are inaccurate. Where the requisite explanation cannot be given in the margin, reference should be made to the paragraph of the statement which is to be submitted under clause (iii) above in which the matter should be fully discussed.

(vii) A statement containing a brief description of all the documents of which translations are sent.

The papers mentioned in clause (iii) should be sent in duplicate.

SVV
29.5.56.
4 c.

(c) The Commissioner should forward the Collector's report with his own remarks to the Revenue Department, so as to reach that Department at least six weeks before the date fixed for the hearing of the case.

(d) The Revenue Department should then send the papers to R.L.A. who will prepare a brief for the guidance of the Government Pleader concerned.

(e) The R. L. A. should then return the papers to the Revenue Department, along with a list of documents which, in his opinion, should be supplied to the Government Pleader.

(f) The Revenue Department should then supply the Government Pleader with the following documents:-

(a) A copy of the Appeal Memo. or Revision Application, as the case may be,

(b) A copy of the Order against which the Appeal or Revision Application is made.

(c) A copy of the diary sent by the Collector to the Revenue Tribunal under Regulation 16 of the Bombay Revenue Tribunal Regulations, 1939.

(d) Copies of such other documents as are mentioned in the list supplied by the R. L. A.

By order of the Governor of Bombay,

Secretary to Government.

SVV
29.5.56.
4 c.

Office of the R. L.A.

Seen and returned.

2. R. D. should bring to the notice of the Tribunal that Government in its letter dated the 30th April 1941 requested the Tribunal to review its order suo motu, that it is therefore presumed that the Tribunal will be reviewing its own decision of its own motion under section 7(1), and that at the hearing no objection will be allowed to be raised that the proceedings are time-barred under section 7(3) of the Bombay Revenue Tribunal Act.

Sd./- P.M.M.
8/8/
Remembrancer of Legal Affairs.

U.R. to R.D., No. 345-P-Consl., dated the 8th August 1941.

SVV
29.5.56.
4 c.

Office of the R.L.A.

Para. 2 of the R.D. office note at p. 26 ante: The question raised for consideration of the R.L.A. is whether a suit can be filed in a court of law on behalf of the Collector or other officer from whose decision an appeal is made to the Bombay Revenue Tribunal against a wrong order passed by the Tribunal in such appeal. As stated in para. 3 of R. L. A.'s opinion at p. 17-20 ante, the Tribunal has been constituted as required under section 236(2) of the Government of India Act, 1935, to exercise the same jurisdiction to entertain appeals and revise decisions in revenue cases as was vested in the Provincial Government immediately before 1st day of April 1937. Section 5 of the Bombay Revenue Tribunal Act, 1939, lays down that in the cases referred to the Tribunal the Tribunal shall have and may exercise all the powers which the Provincial Government has or could have exercised in such cases. It is thus clear that under these provisions the Tribunal has virtually stepped into the shoes of Government as an appellate and revising authority in revenue cases. That being so, it would manifestly be opposed to the spirit of the provisions of section 236 of the Government of India Act and the whole scope of the Bombay Revenue Tribunal Act for a Collector or any other subordinate officer of Government to file a suit against the final order of the Tribunal.

2. Para. 3 of the R.D. office note at p. 25-27 ante: The R. L. A.'s observations in the last para. of his opinion at p. 17-20 ante were made with reference to the various points raised in thex letter of the Commissioner, C.D. at p. 11-13 ante and the legal position thereon. It would hardly be desirable to delete section 6 of the Bombay Revenue Tribunal

SVV
29.5.56.

Act, for if parties are allowed to file indiscriminate appeal, there would be no finality attaching to Tribunal orders. Moreover cases before the Tribunal often involve no points of law and reference to the High Court in such cases would not be proper. It seems to me that a good many of the difficulties experienced would disappear if Government's point of view is properly safeguard and put before the Tribunal. The Circular No. 8724/39 dated the 16th August 1941 recently issued by Revenue Department should achieve it this to a great extent. Whether any amendment of the Revenue Department Tribunal Regulations is necessary, eg., to secure that the Tribunal shall ordinarily hear the Government Pleader before deciding any case, is for R.D. to consider.

Id./- P.N.N.
11/9/
Remembrancer of Legal Affairs.

U.R. to R.D., No. 5037, date the 13th September 1941.

SVV
39.5.56.
4 c.

Office of the R.L.A.

Regulation 4 of the Bombay Revenue Tribunal Regulations, 1939 provides inter alia that all appeal and applications for revision or review made to the ~~under~~ to the Tribunal may be presented in person or through a pleader. It is not clear whether the express on "pleader"in this Regulation is limited to High Court vakils and District pleaders or is used in a more general sense, as it presumably is, to designate all persons, including Barristers, Advocates and Attorneys, who are entitled to plead and act for other in Court (cf. definition of "pleader" in section 2(3) of the Bombay Pleaders Act, 1920; section 2(15) of the Civil Procedure Code; and the definition of "legal practitioner" in section 3 of the Legal Practitioners Act, 1879). Section 9 of the Bombay Pleaders Act, 1920, provides that no person shall appear, plead or act for any party in any civil proceedings in any Court unless he is a pleader as defined in the Act and is entitled and duly empowered to appear, plead and act for such party in such proceeding. The proviso to this section lays down that nothing contained in the section shall apply to any Advocate of the High Court. Order 3 rule 4(1) of the Civil Procedure Code requires that no pleader shall act for any person unless he has been appointed for the purpose by such person by a document in writing signed by such person. There is no corresponding provision in the Criminal Procedure Code prescribing any mode of appointment of a pleader for appearance on behalf of a party in any Criminal Court, but the Bombay High Court has made a rule requiring vakalatnamas to be filed by all pleaders appearing in Criminal Courts (see rule 80 of the High Court Criminal Circulars) It is thus clear from these provisions that pleaders, as distinguished from

SVV
22.6.66.
4 c.

Barristers and Advocates, are required to file a vakalatnama (i.e., written documents of appointment) empowering them to appear and act on behalf of their clients in any civil or Criminal Court. Counsel and Advocates are not required to do so as by virtue of their special status they have an implied authority to appear and act on behalf of their Clients. The Position would however, be somewhat different in the case of the Bombay Revenue Tribunal. The Tribunal as constituted under the Bombay Revenue Tribunal Act, 1939 is not a Court (see R. L. A.'s Opinion No. 7373 dated 31st August 1941). It is a body exercising certain functions of Government in revenue matters. Not being a Court in the strict sense of the term it will not attract the provisions of section 9 of the Bombay Pleaders Act, 1920 or of Order 3 Rule 4 of the Civil Procedure Code. Since Regulation 4 does not specifically provide that a pleader when presenting an appeal or application for revision or review or when appearing and pleading on behalf of a party must produce a vakalatnama, the production of such vakalatnama is not at present obligatory in Tribunal proceedings. The Tribunal, however, like any other body or person, is entitled to be satisfied that the pleader appearing before it on behalf of a party has proper authority to represent the party. It may therefore in its discretion require the pleader to produce a written authority either in the form of a vakalatnama or a power of attorney and may for this purpose a suitably amend the existing Regulation No. 4. If appearance is by Counsel or Advocate the position would be somewhat more involved as it would hardly be proper or appropriate to insist upon a vakalatnama or other written authority in their case. It is however competent for the

SVV
29.5.56.
4 c.

Tribunal , if otherwise satisfied as to the pleader s or Counsel's authority to represent the party, for example on the verbal assurance of the party himself, to dispense with the written authority.

If the Tribunal decides to insist upon the production of a vakalatnama by a pleader appearing in the proceedings before it, the next question that arises for consideration is whether such document would be liable to any stamp duty or court fee, and if so of what amount. A vakalatnama is in itself a kind of power-of-attorney and but for its liability to court fee, it would be liable to stamp duty under Article 48 of the Indian Stamp Act, 1899 (see Ramdeo v. Kallu I.L.R. 1937 Nagpur 494 and Hormasji Bhabha v. Hema Appa 36 Bom. Law Reporter 668). The Bombay Revenue Tribunal is not a Court and does not appear to fall within the class of authorities specified in the second column against entry No.10 relating to a mukhtiarnama or vakalatnama in Schedule II to the Court Fees Act, 1870. Consequently any document purporting to be a vakalatnama produced before the Bombay Revenue Tribunal must strictly be treated as a power-of-attorney and liable as such to a stamp duty of Re. 1 in this Province under Article 48(c) of the Indian Stamp Act. Any stamp duty payable in respect of such powers-of-attorney produced before the Tribunal could however be refunded by Government by taking suitable action under section 9 of the Indian Stamp Act., 1899.

Id./- P.N.M.
17/12
Remembrancer of Legal Affairs.

U.R. to R.D., No. 10910, dated the 17th December 1941.

SVV
29.5.56.
A.C.

SSM 6/6

SVV 6/6